

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KIP EDWARDS, et. al.,
Plaintiffs,
VS.
KB HOME, et. al.,
Defendants.
.

.
. Civil Action
. No. G-11-CV-240
. Houston, Texas
. December 1, 2015
. 2:50 p.m.
.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GREGG COSTA
HEARING

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PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS,
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1 PROCEEDINGS

2 December 1, 2015

3 THE COURT: All right. The Edwards folks. How are
4 you-all?

02:49:26 5 MS. WILLS: Good afternoon, your Honor.

6 MR. JORDAN: Good afternoon, Judge.

7 THE COURT: All right. If you want to state your
8 appearances. Ms. Wills.9 MS. WILLS: Rhonda Wills, along with my co-counsel
02:49:52 10 John Padilla, Anthony Wills, and Genevieve Estrada on behalf of
11 the Plaintiffs.12 MR. JORDAN: David Jordan and Kevin Little on behalf
13 of the Defendants. I believe we have a telephone appearance, as
14 well.

02:49:59 15 THE COURT: Anyone on the phone?

16 MS. MICHAELS: Yes, your Honor. This is Connie
17 Michaels of Littler Mendelson. I am counsel of record for the
18 Bejenaru matter which is related to this one and pending in Los
19 Angeles.02:50:18 20 THE COURT: All right. Do you want to seal this since
21 the whole settlement is under seal? Do you want to seal this
22 hearing?23 MS. WILLS: Actually, your Honor, for reasons that
24 we're going to explain, it would be, in our estimation,
02:50:31 25 inappropriate to seal it. If I could just sort of give the

1 Court sort of an overview of what's going on.

2 THE COURT: Sure. I'm always against sealing. So, if
3 the parties don't want it -- you don't have to convince me if
4 the parties don't want it. But go ahead.

02:50:45 5 MS. WILLIS: Your Honor, as you know, there's the
6 Edwards lawsuit; and as Ms. Michaels mentioned, there's a Los
7 Angeles Superior Court case that's pending called Bejenaru.

8 THE COURT: Right.

9 MS. WILLIS: Edwards, of course, is FLSA claims only.
02:50:56 10 And in Edwards we have 396 Plaintiffs and opt-in Plaintiffs that
11 remain. Of those 396, 75 of them are from California.

12 THE COURT: So are part of both cases?

13 MS. WILLIS: Those 75 people are a part of both cases.

14 THE COURT: In the California case, are there federal
02:51:18 15 claims raised or just the state claims?

16 MS. WILLIS: The California case is California wage and
17 hour state claims only, your Honor; and in that case, in
18 addition to the 75 that are also a part of your Edwards case,
19 there are 166 other absent class members.

02:51:36 20 We had a telephone hearing yesterday with Judge
21 Johnson who is presiding over the Bejenaru California case; and
22 based on the joint recommendation of the parties, as well as the
23 suggestion of the mediator, we proposed to Judge Johnson and she
24 agreed that because this Edwards case sort of, I guess, envelops
02:51:56 25 that case that it would be appropriate to, basically, have the

1 settlement only be before this Court.

2 So, she has now stayed the Bejenaru case with the
3 anticipation being that we're going to amend the complaint,
4 bring those state --

02:52:12 5 THE COURT: Bring the state claims?

6 MS. WILLIS: -- and bring those claims before your
7 Honor. This Court would then handle the entire settlement which
8 means that this settlement will be a hybrid settlement, an FLSA
9 and a Rule 23 class action settlement.

02:52:25 10 THE COURT: Which then changes the approval
11 requirement process.

12 MS. WILLIS: Which changes everything, your Honor.

13 And so, then, your Honor would maintain
14 jurisdiction over the case with respect to approving the entire
02:52:35 15 settlement as well as maintain jurisdiction over enforcing the
16 settlement. And once she knows that you have done a final
17 approval of the settlement, the Bejenaru case will be dismissed.

18 THE COURT: So, when you said there's 75 people here
19 who are also in California, how many people total are in the
02:52:52 20 California case?

21 MS. WILLIS: 241. And I will say, your Honor, that is
22 our best estimate. We are still working through those numbers.
23 But 241 -- it might give or take one or two people. It's about
24 241, your Honor.

02:53:05 25 THE COURT: Who are in the entire class?

1 MS. WILLIS: Correct.

2 MR. JORDAN: The California people.

3 MS. WILLIS: The California people. Yes, that's what
4 you're asking about.

02:53:13 5 THE COURT: But in other words, that's an opt-out
6 case. So, you say 271. It's not the actual -- that's the
7 universe of people that are going to be affected unless someone
8 opts out.

9 MS. WILLIS: Correct. So, there are sort of two camps
02:53:24 10 in that group, your Honor. So, it's a total of 241. 75 are
11 already before this Court having opted in to Edwards. So, we
12 believe, your Honor, based on Fifth Circuit precedent and
13 rulings, frankly, from your Honor that for those 75 people who
14 opted in to Edwards, your Honor has the right to settle all
02:53:42 15 their claims, be they federal or state claims.

16 So, those 75 people will have their state claims
17 determined by the Court as to whether or not the settlement is
18 fair to those people. So, that leaves 166 who did not opt in
19 and they are --

02:53:55 20 THE COURT: But are a part of the class.

21 MS. WILLIS: And they're all absent class members, your
22 Honor.

23 THE COURT: Right.

24 MS. WILLIS: None of them are named class members in
02:54:01 25 the case. They're all absent class members. And those 166 will

1 receive notice and an opportunity to opt out. They'll have to
2 send in a claim form in order to get their settlement proceeds.

3 THE COURT: Just thinking practically, most of those
4 people would have received a notice in this case and they chose
02:54:17 5 not -- I mean, they're probably not very active people because
6 they chose not to opt in here. Wouldn't they have received
7 something in this case?

8 MS. WILLIS: Some of them would have; but because of
9 the statute of limitations, I think there might maybe about a --

02:54:27 10 THE COURT: The time period.

11 MS. WILLIS: -- six-to-eight month period where some
12 people --

13 MR. JORDAN: There's a later group that wouldn't --

14 THE COURT: But most of them probably got notice in
02:54:35 15 this case. So, now, they'll get one in that case saying it's
16 not an opt-in situation, you're going to be affected by this
17 settlement unless you say something about it.

18 MS. WILLIS: That's correct, your Honor.

19 And so, if your Honor agrees with that, what we
02:54:50 20 propose is there is a \$7.5 million settlement. That comes to a
21 per claimant gross amount of \$13,345 and that's gross.

22 THE COURT: When you say "per claimant," including the
23 whole universe?

24 MS. WILLIS: Everyone. That's a total of --

02:55:05 25 THE COURT: Including the ones that are to be brought

1 into this?

2 MS. WILLIS: And that's an estimated 562 total
3 claimants. That's Edwards claimants, as well as California
4 absent people that aren't in Edwards. So --

02:55:14 5 THE COURT: If you do the multiplier, the California
6 people are getting -- I don't have it right in front of me right
7 now.

8 MS. WILLIS: I do. I have an actual copy if your Honor
9 would like it.

02:55:21 10 THE COURT: Yeah.

11 All right.

12 The absent class members are getting less than
13 the opt-ins. But they don't have federal claims for one thing,
14 they just have state claims.

02:55:39 15 MS. WILLIS: They don't. And that case was never
16 certified, your Honor, so that also --

17 THE COURT: The uncertainty of certification.

18 MS. WILLIS: The uncertainty of certification.

19 THE COURT: When was that case filed?

02:55:47 20 MS. WILLIS: Two years -- September 12th of 2013, your
21 Honor.

22 THE COURT: What's the basis for distinguishing the --
23 I think I probably know. But the Houston and California get
24 1.25. The other settling plaintiffs get -- Edwards opt-ins gets
02:56:09 25 just a one multiplier?

1 MS. WILLIS: Well, the Houston settling plaintiffs, as
2 your Honor knows, they've been actively involved in the
3 litigation. In fact, some of them have had their claims
4 dismissed for not being actively involved.

02:56:16

5 THE COURT: Right.

02:56:26

6 MS. WILLIS: I mean, they've all had to turn in
7 documents. They've had to provide testimony through
8 declarations. They've had to provide tax returns. They've been
9 actively involved. And so, that gave them a higher multiplier
10 because they have taken greater risks. They've been more
11 involved in the litigation, and they've taken an active role.

12 The California settling plaintiffs have both
13 state claims and their federal claims. So, they have two
14 claims.

02:56:40

15 And then, with respect to all others, they have
16 the 1.0 multiplier.

17 THE COURT: How many others are there?

02:56:54

18 MS. WILLIS: Total other Edwards people, your Honor,
19 there are -- 63 of them are from Houston and 258 are from other
20 places. So, we have 75 from California, 63 from Houston, and
21 258 from other places.

22 THE COURT: Which are -- I'm just curious, other
23 non-Houston parts of Texas or --

24 MS. WILLIS: Non-Houston, other parts of Texas --

02:57:06

25 MR. JORDAN: 26 other --

1 MS. WILLIS: -- from other states.

2 THE COURT: I mean, another basis for giving them a
3 little less -- as allocated but giving them that lesser amount
4 is there's -- you know, there's potentially an argument, I think
02:57:20 5 which I talked about, we were going to try the Houston people
6 first but whether there would be venue issues with some of the
7 non-local people. So, I think that's -- there's reasons to
8 allocate it the way you have.

9 All right. Well, then, what -- how long is the
02:57:38 10 process of -- as we know, the FLSA we could wrap that up
11 tomorrow or today. The issue is going to be the notice
12 procedures for the Rule 23.

13 MS. WILLIS: There are, your Honor. So, this is a
14 proposed schedule that we -- we had a conference call yesterday
02:57:54 15 with opposing counsel. We discussed two weeks of getting the
16 following filed: amending the pleadings to add the California
17 claims. We are also going to propose to the Court that we have
18 one named Plaintiff who will be a representative on behalf of
19 the Bejenaru folks, and that will be Andrea Bejenaru. And then,
02:58:15 20 have one person as a representative for the FLSA, and that will
21 be Kip Edwards.

22 So, it will be -- and the amended complaint, it
23 will be Bejenaru and Edwards as the representative Plaintiffs.

24 THE COURT: All right.

02:58:26 25 MS. WILLIS: They both attended the mediation. They've

1 both been actively involved in the settlement process.

2 The parties are also going to enter into a
3 stipulation, that is, for any reason the settlement falls apart,
4 we will maintain the status quo and go back to California to
02:58:39 5 litigate those claims and then continue to litigate the FLSA
6 claims before this Court.

7 The next piece that will be filed in two weeks,
8 your Honor, will be our joint motion for preliminary approval.
9 It will include the approval for the FLSA settlement, as well as
02:58:55 10 the claims for the 75 California people to settle both their
11 FLSA claims and their state law claims.

12 We will also include the settlement agreement.
13 And then, we are also going to include a notice form and a claim
14 form to be mailed out to the Rule 23 absent class members. And
02:59:13 15 there are 166 people approximately who will receive that --
16 those claim forms.

17 We will also submit to the Court a proposed
18 order, basically, asking that Ms. Bejenaru and Mr. Edwards be
19 appointed as class representatives, that we be appointed as
02:59:30 20 class counsel. We're going to ask the Court to appoint a claims
21 administrator. We are now seeking bids from two claims
22 administrators, and we're going to go with the more affordable
23 claims administrator to administer the claims.

24 We are also going to ask the Court to certify the
02:59:44 25 claims for settlement purposes, so recertify the FLSA and then

1 certify the Rule 23.

2 The parties have agreed on a notice and opt-out
3 period for the absent class members of 45 days. And then, we
4 would ask that once that 45 days has expired that the Court
03:00:01 5 promptly set a final fairness hearing.

6 There are a couple of other issues, though, your
7 Honor, with the settlement that I wanted to bring to the Court's
8 attention.

9 THE COURT: Sure. I mean, so far everything you said
03:00:11 10 sounds -- sounds acceptable.

11 MS. WILLIS: We just want to sort of talk everything
12 through with the Court so, if there are issues when we file our
13 papers, we can adjust or address whatever the Court might have
14 concerns about.

03:00:19 15 So, the case expenses in the case, your Honor,
16 are roughly about \$250,000. We're coming up with a hard number
17 right now. We've sent out letters asking all vendors.

18 THE COURT: In both cases?

19 MS. WILLIS: In both cases. And we still have bills
03:00:32 20 coming in. But \$250,000 is a rough estimate.

21 THE COURT: All right.

22 MS. WILLIS: We are going to request service awards,
23 two different types of service awards. One will be for Kip
24 Edwards, Michelle Brailey, and Andrea Bejenaru. Michelle
03:00:46 25 Brailey also attended the mediation and has been very involved,

1 but she's due to deliver a baby any day now. So, that's kind of
2 going to take her out of continuing.

3 THE COURT: Was she once -- she's in the Houston
4 class?

03:01:01 5 MS. WILLIS: She's in the Houston class. She came to
6 the mediation, came to San Francisco for two or three days for
7 mediation and has been very involved. For those three folks,
8 we're going to ask for \$15,000 for each of them.

9 And for the other named plaintiffs, we're going
03:01:15 10 to ask for \$10,000 for each of them.

11 THE COURT: There were three others?

12 MS. WILLIS: There are a lot of them in Bejenaru.
13 Correct me if I'm wrong.

14 MR. JORDAN: I won't be able to correct you.

03:01:27 15 MS. WILLIS: Connie, are there 12 named Plaintiffs in
16 Bejenaru?

17 MS. MICHAELS: I believe there's 11.

18 MS. WILLIS: Okay. So, there are ten. Ten in the
19 California case, and they've all been deposed. And some of them
03:01:36 20 have had to travel to give their depositions.

21 THE COURT: That was my question. What have they done
22 other than being named? But they all have been deposed?

23 MS. WILLIS: And they've provided documents,
24 information. They've been deposed. They've actively
03:01:48 25 participated. And then here in Texas, I believe there are --

1 MS. ESTRADA: 15.

2 MS. WILLS: 15. And I -- if I'm not mistaken, your
3 Honor, there may be one of them who was not deposed. But we're
4 trying to verify that. But she's been involved. The
03:02:00 5 Defendants, for some reason, I think, just didn't take her
6 deposition.

7 MR. JORDAN: Who was that?

8 MS. ESTRADA: Courtney.

9 MS. WILLS: Courtney.

03:02:05 10 MR. PADILLA: And there was one California person that
11 was about to be deposed when the case settled. I think he had
12 traveled to California.

13 MS. WILLS: He literally had shown up for his
14 deposition; and we said, "We're going to save the court
03:02:15 15 reporting fees. Go back home. Get back on the plane." But he
16 had prepared. And so, they -- those are the amounts that we
17 will be seeking, if the Court feels comfortable with that, for
18 those folks who have really driven this litigation. I mean,
19 it's gone on four and half years, and these people have been
03:02:34 20 very involved.

21 The third-party administrator, as we mentioned,
22 we're going to get two bids.

23 THE COURT: How many people -- I don't know if you
24 have this answer on your fingertips. Are there people who
03:02:45 25 haven't -- who aren't named plaintiffs who have been deposed?

1 MS. WILLS: No, your Honor.

2 THE COURT: Okay.

3 MS. WILLS: Not on the plaintiffs' side.

4 THE COURT: Right.

03:02:49 5 MR. JORDAN: Is that correct? We selected non-named
6 plaintiffs I thought that had been -- all of them were named?
7 Okay.

8 MS. WILLS: They were all named plaintiffs. You're
9 thinking about Williams.

03:03:01 10 MR. JORDAN: No. I thought we identified -- I thought
11 the original agreement was we were going to take all the named
12 plaintiffs plus -- plus two non-named from every jurisdiction.
13 So, I thought there were at least non-named.

14 THE COURT: I had recalled at least some discussion
03:03:13 15 about that early on but --

16 MR. PADILLA: Did that stop when the decision was made
17 to try the Houston case first?

18 MS. WILLS: I think it did.

19 MR. JORDAN: But I thought we took the two non-named
03:03:23 20 in Houston.

21 THE COURT: You guys can look it up later. I guess my
22 only point is to me that -- somebody being named or unnamed
23 doesn't really involve a lot of investment of time on their
24 part. Being deposed, producing documents, attending meetings,
03:03:29 25 mediations, that I understand.

1 So, I would think, if there are people who aren't
2 named but who did invest a lot of time, then maybe they should
3 be considered, too. But it might not be as easy a line to draw
4 just saying named plaintiff. So, just a thought.

03:03:46 5 MS. WILLS: Yes, your Honor.

6 THE COURT: It's not an issue if Ms. Wills is right
7 about who has been deposed.

8 MS. WILLS: We'll verify it.

9 MR. JORDAN: We don't have an objection either way, so
03:03:56 10 we'll --

11 MS. WILLS: Thank you, your Honor.

12 With respect to the third-party administrator,
13 once we got the bids, your Honor, we'll be able to -- what we,
14 typically, do is say, you know, "Look, we got to put an amount
03:04:08 15 in here. You need to tell us the max that you're going to bill
16 us." And so, typically, we negotiate a fee; and that fee will
17 cover all of the mail-out costs, the costs to send out all of
18 the checks to all of the claimants, to handle all of the taxes.

19 There are often state tax implications. They
03:04:25 20 handle the W-2s, the 1099s. And then, also, basically, to
21 handle everything in processing, the notice, the claim forms, as
22 well as the checks. And then, we're going to request also, your
23 Honor, that to the extent that there are unclaimed checks or
24 uncashed checks that after six months that money be paid into
03:04:44 25 the State of Texas unclaimed property fund.

1 With respect to attorney's fees, your Honor, we
2 are still working on our lodestar. After four and half years of
3 litigation in two cases across various states, our attorney's
4 fees are -- our lodestar is, we believe, very -- very large.

03:05:05

5 THE COURT: What case has involved more work, this one
6 -- this has been pending a lot longer. This one or the
7 California one?

8 MS. WILLIS: I would say this one, certainly, your
9 Honor. I mean, there are -- it's been --

03:05:16

10 THE COURT: Right. No. I'm asking because I'm
11 familiar with the case. I want to get a sense of --

12 MS. WILLIS: In the other case, you know, there have
13 probably been over ten -- you know, ten, twelve depositions,
14 lots of documents produced in that case. And frankly, there's
15 been a lot of overlap.

03:05:27

16 THE COURT: Right.

17 MS. WILLIS: So, it's kind of hard to distinguish
18 between the two. But we anticipate seeking an attorney fee of
19 40 percent. But certainly, we will submit to the Court our
20 lodestar and the other information to support the fee that we're
21 seeking.

03:05:37

22 There is another issue that's come up, your
23 Honor, with something called a PAGA claim. I can -- I've
24 conferred with our mediator on this because we were kind of
25 having a disagreement. Just so your Honor knows, in the State

03:05:53

1 of California, there's something called a PAGA claim.

2 And Connie, you can chime in if you'd like.

3 But basically, KB Home wants to have PAGA claims
4 released as a part of the settlement. In speaking with our
03:06:11 5 mediator, he believes that that's reasonable. And we have an
6 excellent mediator, Mark Rudy. He's in California. He handles
7 these mediations all the time.

8 So, we will agree to amend the complaint to
9 include the PAGA claims. Mr. Rudy tells me that it's standard.

03:06:27 10 We need to send a letter, basically, to the State of California
11 telling them that we're doing this. But he says we can amend
12 the complaint and go ahead and send the letter now because there
13 is a 33-day notice period; but the settlement won't be finally
14 approved until well after that 33 days has expired.

03:06:42 15 THE COURT: When you say -- is that like their Work
16 Force Commission or --

17 MS. WILLS: Connie, do you want to explain to the
18 Court a bit more about the PAGA claim?

19 THE COURT: How does this work? Yeah.

03:06:51 20 MR. JORDAN: By the way, can I -- let me just -- this
21 is David Jordan. Let me just make one comment. There are two
22 or three outstanding terms that we're still negotiating with the
23 mediator. I don't know that -- I can appreciate this PAGA
24 discussion. But I don't know if this is the appropriate forum
03:07:05 25 to discuss maybe many other outstanding issues that we have.

1 They're not significantly material, but I don't --

2 THE COURT: Is that P-A -- spell it for me.

3 MR. JORDAN: Private Attorney General Action.

4 MS. WILLS: I'm sorry, your Honor. Private Attorney
03:07:15 5 General Action.

6 The reason why I bring it up to the Court is the
7 mediator has recommended that we set aside \$25,000 to be paid to
8 the Attorney General's Office for this PAGA claim. And
9 obviously, that would have to be something that the Court feels
03:07:29 10 comfortable with, which is why I bring it up at this juncture
11 when we're talking about how the settlement funds are going to
12 be divvied up.

13 That is not on the settlement allocation sort of,
14 I guess, outline that we sent to the Court earlier. But that's
03:07:44 15 why I bring that up at this juncture, your Honor, because it's,
16 obviously, something that the Court has to evaluate.

17 THE COURT: All right.

18 MS. WILLS: I'm sorry, Connie, if you want --

19 THE COURT: Did you want to say -- I mean, did you
03:08:00 20 want to explain that more or -- Mr. Jordan was saying that we
21 should wait to see if that is even going to be issue.

22 MR. JORDAN: I'm just suggesting as it relates to
23 anything else you might want to raise about sort of ongoing
24 negotiations, I think we should reserve that until maybe we've
03:08:15 25 agreed to these issues. But I'm okay with discussing the PAGA

1 issue.

2 THE COURT: Can you explain these Private Attorney
3 General Actions, how they normally get resolved in a class
4 settlement.

03:08:24 5 MS. MICHAELS: Certainly, your Honor. Again, this is
6 Connie Michaels. It is pretty typical in California class
7 action matters that if a PAGA claim, the Private Attorney
8 General Act Claim, in California is not originally part of the
9 complaint that for settlement purposes the complaint gets added.
03:08:49 10 The letter gets sent to the Labor Workforce Development Agency,
11 and as pro forma it just indicates that it's not going to take
12 any action and that an amount along the lines of what the
13 mediator recommended is, in fact, paid to the state in order to
14 exhaust those particular claims.

03:09:09 15 So, the procedure that Ms. Wills outlined that
16 she, you know, is apparently comfortable with is, in fact,
17 typical of what we do out here to resolve those additional
18 claims. They're largely tag-a-long claims so that they derive
19 from the same State Labor Code, and it's just an effort to try
03:09:27 20 to wrap up all of the claims at once.

21 THE COURT: So, it's, basically, people have an
22 individual claim under California state law but they also have
23 the right to bring a claim in the name of the state? Is that --

24 MS. MICHAELS: Yes.

03:09:38 25 THE COURT: So, your concern is, if that's not

1 included, these people who are part of this class settlement,
2 could turn around and go sue not in their own name but in the
3 name of the Attorney General? Is that, basically, the --

03:09:54 4 MS. MICHAELS: That's, basically, it, your Honor;
5 though, frankly, my concern is less with Ms. Wills' clients and
6 more with certain plaintiffs' firms out here that do tend to
7 look for what cases have settled and then themselves initiate
8 these PAGA actions as sort of a pick up, if you will, to try to
9 get anything that's remaining.

03:10:14 10 And so, we do want to resolve that. The case
11 here is settling for a significant amount. I mean, I want to
12 make sure that all of the claims are covered.

13 THE COURT: No, sure. I'm trying to figure out how
14 this would work. But those plaintiffs' firms would have to find
03:10:27 15 -- I mean, they still have to find a plaintiff or just -- you
16 can just file it under the name of the state, it doesn't even
17 have to be -- you don't have to have an actual plaintiff?

18 MS. MICHAELS: They have to find one plaintiff.

19 THE COURT: Okay, right. Yeah. Okay. I'll have to
03:10:40 20 -- one of my best friends is a federal judge in San Francisco.
21 Now, I have something to ask him about.

22 MS. MICHAELS: Oh. Well, if he has any experience
23 with this, I'm sure you'll get an earful. It's really the bane
24 of the Court's existence out here because PAGA actions don't
03:10:55 25 have to follow any typical class action procedures and our

1 judges out here are really trying to figure out the best way to
2 handle them. So, they're really getting a lot of focus on
3 litigation out here over the last year.

03:11:08 4 THE COURT: All right. Well, thank you for explaining
5 that.

6 MS. MICHAELS: Thank you for giving me the
7 opportunity.

8 MS. WILLS: So, we would propose, your Honor, based on
9 the allocation, that this would be a line item up there where
03:11:17 10 the third-party administration fee would go, as well.

11 Also, your Honor, we have discussed the
12 possibility of having a reserve fund or hold-back. And that
13 would be just in case something goes wrong with calculation or
14 someone gets the wrong amount or someone is inadvertently left
03:11:38 15 out, that we don't wind up having disbursed all the money and
16 there's no money left for that person.

17 We were -- I was thinking -- we've kind of been
18 talking about a reserve fund of something in the range of 25,000
19 to 50,000, something like that; and then, at the end of a set
03:11:55 20 time period, probably six months, when the -- all the other
21 money would be paid into the state anyway, it would be disbursed
22 equally to everyone so everybody would get another check for 30,
23 \$40 or whatever it would be.

24 THE COURT: I don't have a problem with that. And the
03:12:10 25 reserve fund is not going to be as much an issue here as it

1 normally is because, if I'm understanding this right -- I mean,
2 often in the class actions, you don't know who -- you know,
3 where they have to, like, submit something to actually claim a
4 check. I mean, here, everyone is getting paid in that
03:12:24 5 California case, right?

6 MS. WILLIS: Except for the 166 people. They have to
7 send in a claim form.

8 THE COURT: They do. Okay. So, what's going to
9 happen when -- I assume the claims administrator says, "Here's
03:12:33 10 the percentage that usually submits something," right? You have
11 a good sense but --

12 MR. JORDAN: Uh-huh.

13 THE COURT: -- it can come in above or below that.
14 What's -- is that the funds you're saying would revert to the
03:12:44 15 state -- this Texas fund?

16 MS. WILLIS: No, sir. That's slightly different.
17 Basically, once we know how many claimants there are, then there
18 would be a recalculation.

19 THE COURT: I see.

03:12:51 20 MS. WILLIS: But this would be for --

21 THE COURT: I see.

22 MS. WILLIS: Say we completely miss somebody --

23 THE COURT: No, I get it. No I understand.

24 MS. WILLIS: -- it would be more for that.

03:12:57 25 THE COURT: Someone hears about it and says why wasn't

1 I in this and their name wasn't on the list.

2 MR. JORDAN: Or we do the math wrong. We thought
3 there were 20 weeks and there were 120.

03:13:05

4 THE COURT: I see. But the money won't be distributed
5 until we know who's claimed -- who's submitted something?

6 MS. WILLS: Which will happen after the 45 days have
7 expired and then your Honor --

8 THE COURT: So, you don't even have to estimate the
9 number. I got it.

03:13:13

10 MS. WILLS: Yeah.

11 MR. JORDAN: And then, there will openly be a
12 subsequent distribution of the reserve later.

13 THE COURT: Right, right.

14 MS. WILLS: Yeah.

03:13:18

15 THE COURT: No. That all sounds fine.

16 MS. WILLS: Let's see. And then, your Honor, we also
17 intend that one-half of the money to each claimant be unpaid
18 wages and then one-half be allocated to liquidated damages
19 and/or penalties for the California claims.

03:13:35

20 And we have also made a minimum payment of \$500
21 to each claimant. So, even folks that have a really small claim
22 will get at least \$500.

23 THE COURT: That sounds fine. On the first point you
24 just mentioned, just for the California plaintiffs is it going
03:13:52 25 to be allocated that way, half wages, half liquidated damages?

1 MS. WILLIS: Yes, your Honor.

2 THE COURT: Everyone else is just all wages?

3 MS. WILLIS: Everybody. Everyone, it will be half and
4 half.

03:14:01 5 THE COURT: Everyone.

6 MS. WILLIS: But with the California people, instead of
7 liquidated damages, it will also be penalties because under
8 California law they're entitled to that.

9 THE COURT: Okay. Now, I understand. Okay.

03:14:10 10 MS. WILLIS: And so, your Honor started out asking
11 about sealing the record; and as your Honor -- now that --
12 that's why I wanted to explain that it's a Rule 23; and
13 accordingly, it has to be an open and public proceeding.

14 THE COURT: Right, right. I'm thinking about that
03:14:24 15 last point I asked for a clarification on. I mean, it does seem
16 to me the wages would be higher than 50 percent, at least for
17 the FLSA case that -- that I'm familiar with. I mean, the
18 California -- it was --

19 MS. WILLIS: Well, since it's double damages,
03:14:42 20 typically --

21 THE COURT: For liquidated?

22 MS. WILLIS: -- the liquidated damages are equal to
23 whatever the wages are. That's why we always just usually do
24 half and half because it's double damages, so liquidated damages
03:14:50 25 are going to be whatever the wages are. So, that's why we

1 usually split it down the middle since it's -- liquidated
2 damages are considered double damages.

03:15:02 3 THE COURT: Right. Looking through here, they were
4 really asserting strongly a good faith defense. I know you
5 vigorously disagreed with that.

6 MR. JORDAN: You know, your Honor, in these kinds of
7 cases, typically, you look back to the complaint to source out
8 the breakdown of the damages and the taxability of each feature.
9 And there's a lot of allegations I think that support both a low
03:15:19 10 wage number and a double damages for the liquidated portion.

11 I don't -- and it's pretty typical in these cases
12 that we would settle at a 50/50 range. So, I don't forecast
13 that that would be problematic, at least from our perspective
14 so --

03:15:33 15 THE COURT: Okay.

16 MS. WILLS: Your Honor, in terms of a schedule, we
17 would -- we've agreed that two weeks, we can get the preliminary
18 settlement papers filed with the Court, which would be December
19 15th. We would ask that the Court set a hearing thereafter so
03:15:47 20 that we can, obviously, address any concerns that the Court
21 might have once the preliminary approval papers are filed. And
22 then, if the Court approves everything, we can then know the
23 dates to put in to get notice out to those 166 persons in
24 California.

03:16:03 25 THE COURT: How soon after the filing are you

1 available? I mean, it shouldn't take me long, especially with
2 this discussion, to review it all.

3 MR. JORDAN: I'm --

4 THE COURT: Did you want to do it, you know, this
03:16:14 5 month or just put it --

6 MS. WILLIS: We would like to do it this month, your
7 Honor.

8 THE COURT: We can do it this month then. What
9 about --

03:16:20 10 What day did you say you're going to file it, two
11 weeks from now?

12 MS. WILLIS: The 15th, your Honor.

13 THE COURT: What about the 21st? Well, what about the
14 22nd? As you just heard, I have this trial starting the 16th.
03:16:34 15 It is a bench trial. I mean, how long -- how long do you think
16 the hearing will take?

17 MS. WILLIS: It depends on how many questions your
18 Honor has.

19 MR. JORDAN: Sounds like it will be short, your Honor.

03:16:45 20 THE COURT: Shorter than this probably, right, because
21 it's all being explained today?

22 Do you think we can do it by phone even?

23 MS. WILLIS: Well, it might be helpful if you have
24 something you want to point out to us in the papers so we can
03:16:55 25 fix it right then and there.

1 THE COURT: She likes coming to the courthouse.
2 Mr. Jordan not so much.

3 MS. WILLIS: I'm happy to do whatever your Honor wants.

03:17:06

4 THE COURT: I like the courthouse. I come here every
5 day.

6 MS. WILLIS: We can do it by phone if that works better
7 for the Court's schedule.

8 MR. JORDAN: And we're available on the 22nd.

9 MS. WILLIS: We're available as well, your Honor.

03:17:15

10 MR. JORDAN: I prefer that week.

11 THE COURT: Let's just do it then, on the 22nd.

12 10:00 o'clock, does that work?

13 MR. JORDAN: That's fine, your Honor.

14 MS. WILLIS: That's fine with us, your Honor.

03:17:23

15 THE COURT: I'll do it here. Anyone is welcome to
16 call in, though. I mean, it's -- we'll do it in the same place,
17 assuming Judge Bennett doesn't have a trial the week of
18 Christmas, which I doubt.

03:17:40

19 MS. WILLIS: And I guess then at that time, your Honor,
20 we can decide on a fairness hearing date or does your Honor -- I
21 don't know how busy -- looks like we're going to be falling into
22 sometime in February.

23 THE COURT: I was going to say what time frame.

24 February is pretty good. The middle of February is pretty good.

03:17:52

25 We should be able to make that work.

1 MR. JORDAN: We just need enough time for the claims
2 administrator to generate the notices and get them out the door.
3 So, we'll have to -- we'll collaborate with them.

03:18:05

4 THE COURT: You'll probably have a better idea in a
5 couple of weeks. Do you want to just set it then?

6 MR. JORDAN: Yeah.

7 THE COURT: We'll just set it -- at the December 22nd
8 hearing, we'll set the other hearings.

9 MR. JORDAN: I think that's right.

03:18:11

10 MR. PADILLA: Are we off the record, Judge?

11 THE COURT: Yes.

12 (Proceedings concluded at 3:18 p.m.)

13

14

15 C E R T I F I C A T E

16

17 I certify that the foregoing is a correct transcript
18 from the record of proceedings in the above-entitled matter, to
19 the best of my ability.

20

21 By: /s/ Gayle L. Dye 01-15-2016

22 Gayle L. Dye, CSR, RDR, CRR Date

23

24

25